

**LAW OFFICE OF JERRY BERNHAUT**

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***Via Certified Mail –Return Receipt Requested***

May 25, 2016

Karen Diemer, City Manager  
Members of the City Council  
Head of Agency  
City of Arcata  
736 F Street  
Arcata, CA 95521

Mark Andre, Director  
Environmental Services Department  
City of Arcata  
736 F Street  
Arcata, CA 95521

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Ms. Diemer, Members of the City Council, Mr. Andre, and Head of Agency:

**STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”) 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring as a result of operations at the City of Arcata’s Wastewater Treatment Facility (“WWTF or Facility”) located at 600 South G Street in Arcata, and its associated sewage collection system.

River Watch hereby places the City of Arcata (“the City”) as owner and operator of the Facility and associated collection system on notice, that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402 33 U.S.C. § 1342, and the Regional Water Quality Control Board, North Coast Region, Water Quality Control Plan (“Basin Plan”), as the result of alleged violations of permit conditions or limitations set forth in the City’s National Pollutant Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that the discharge of pollutants is prohibited with the exception of

enumerated statutory exceptions (*see* CWA § 301(a), 33 U.S.C. § 1311(a)). One such exception authorizes a discharger who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a discharger in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City’s operations in the region at issue in this Notice is the North Coast Regional Water Quality Control Board (“RWQCB-1”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated*

River Watch has identified in this Notice the City’s violations of the specific standards or limitations set forth in RWQCB Order No. R1-2004-0036 as amended by RWQCB Order No. R1-2012-0031, NPDES No. CA0022713 (*Waste Discharge Requirements for the City of Arcata Municipal Wastewater Treatment Facility*). A violation of the NPDES permit is a violation of the CWA.

The City is also a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2003-0005-DWQ and 2013-0001-DWQ (“Statewide WDR”) governing the operation of sanitary sewer systems. Failure to comply with the Statewide WDR is a major cause of sewage system overflows. The Statewide WDR is fully incorporated in Orders No. R1-2012-0031 and R1-2004-0036.



2. *The activity alleged to constitute a violation.*

The City's WWTF serves the City and the Glendale area which is administered by the Fieldbrook Community Services District, and discharges treated domestic waste from secondary treatment processes into Humboldt Bay, a water of the United States. Secondary treated wastewater is also discharged to the Arcata Marsh Wildlife Sanctuary ("Sanctuary"). The 30-acre Sanctuary provides final polishing for a portion of the wastewater which flows by gravity through the Sanctuary and is eventually collected and pumped back to the chlorine contact basin.

Most often, the NPDES permit standards and limitations being violated are self-explanatory and an examination of the language of the NPDES Permit itself is sufficient to inform the City of its failure to fully comply with the permit requirements. This is especially so since the City is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch sets forth the following narratives which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records, including the City's Self Monitoring Reports and the California Integrated Water Quality System ("CIWQS") reporting system relating to operations at the Facility and through its associated collection system. Additional records and other public documents in the City's possession or otherwise available to the City regarding its Facility and collection system (all of which are hereby incorporated by reference) may, upon discovery, reveal additional violations.

River Watch contends that from May 1, 2011 through May 1, 2016, the City violated the Act as described herein. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

a. Collection System Subsurface Discharges To Adjacent Surface Waters Caused By Underground Exfiltration

Underground discharges, in which untreated sewage is discharged from the collection system prior to reaching the Facility, are alleged to have occurred throughout the period from May 1, 2011 through May 1, 2016. Discharges are alleged to have occurred from sewer lines in the collection system located within 200 feet of a surface water, and identified in the City's Capital Improvement Plan(s) as requiring structural repair or replacement; whenever pressure in said sewer lines was sufficient to cause discharges through structural defects in the lines.

It is known throughout the industry that subsurface discharges occur wherever aging, damaged, and/or structurally defective sewer lines in a collection systems are located adjacent to surface waters. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health. Studies tracing human markers specific to the human digestive system in surface

waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.<sup>1</sup>

During the course of discovery River Watch will test surface waters adjacent to sewer lines in the City's collection system located within 200 feet of a surface water, and identified in the City's Capital Improvement Plan(s) as requiring structural repair or replacement, to determine the location and extent of exfiltration. Evidence of exfiltration can also be supported by reviewing mass balance data and "inflow and infiltration" ("I/I") data. Said discharges were in violation of the following NPDES Permit Prohibitions:

Order No. R1-2004-0036, A.5. - "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in Finding No. 3) from anywhere within the collection, treatment, or disposal facility is prohibited."

Order No. R1-2004-0036, A.3. - "Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code is prohibited."

Order No. R1-2012-0031, III.B. - "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

Order No. R1-2012-0031, III.B. - "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in section II. B of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in Prohibition III. I and in Attachment D, Standard Provision G (Bypass)."

Order No. R1-2012-0031, III.C. - "Creation of pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code is prohibited."

b. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs") in which untreated sewage is discharged above ground from the collection system prior to reaching the Facility, are alleged to have occurred during the period from May 1, 2011 through May 1, 2016 both on the dates identified in the City's Interactive Public SSO Reports (39 separate violations) filed with CIWQS and on dates when no reports were filed by the City. River Watch contends these violations are

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<sup>1</sup> See Report of Human Marker Study issued July, 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.



continuing in nature or have a likelihood of occurring in the future, all in violation of the following NPDES Permit Prohibitions:

Order No. R1-2004-0036, A.1. - "The discharge of waste to Humboldt Bay (Arcata Bay) is prohibited unless it is done in conjunction with the Arcata Marsh and Wildlife Sanctuary.

Order No. R1-2004-0036, A.3. - "Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code is prohibited.

Order No. R1-2004-0036, A.5. - "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in Finding No. 3) from anywhere within the collection, treatment, or disposal facility is prohibited.

Order No. R1-2012-0031, III.A. - "The discharge of waste to Humboldt Bay is prohibited unless the discharge is consistent with State Board Order No. 79-20 and Regional Water Board Resolution 83-9."

Order No. R1-2012-0031, III.B. - "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

Order No. R1-2012-0031, III.C. - "Creation of pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code is prohibited."

Order No. R1-2012-0031, III.E. - "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in section II. B of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in Prohibition III. I and in Attachment D, Standard Provision G (Bypass)."

*Releases Reported.* The City's collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States.

As recorded in CIWQS Public SSO Reports, the City's collection system has experienced at least 39 SSOs between May 1, 2011 and May 1, 2016 with a combined volume of at least 46,157 gallons. Of the total 39 SSOs, 16 were reported as having reached a surface water with a combined volume of at least 38,424 gallons. Examples follow:

- An SSO occurred on December 7, 2013 (Event # 801574) at 12<sup>th</sup> and L Street in the City with a total reported discharge of 8,835 gallons of untreated sewage, 989 gallons of which were reported as reaching a surface water. The only explanation for the method used to estimate volume was “visual”, for a spill where the Final Spill Destination was reported as “Building or Structure; Drainage Channel; Surface Water; Unpaved surface”.
- An SSO occurred on January 16, 2015 (Event # 812339) at 1610 Panorama Drive in the City with a total reported discharge of 950 gallons of untreated sewage, 800 gallons of which were reported as reaching a surface water - Beith Creek. Again, the only explanation for the method of volume estimation was “visual” and no samples were taken.
- An SSO occurred on November 18, 2014 (Event # 810843) at 2510 McDowell Court in the City with a total reported discharge of 1,305 gallons of untreated sewage, 200 gallons of which were reported recovered, and none were reported as reaching a surface water. However, the spill location was reported as “slight sloping street with soil gutters” and the final spill destination was reported as “Street/Curb and Gutter; Unpaved surface”. The only explanation of volume estimation was “null”. Spill response activity was described as “Cleaned-Up; Mitigated Effects of Spill; Contained all or portion of spill; Restored flow; Returned Portion of Spill to Sanitary Sewer System.” No further description of the surrounding terrain was provided to determine whether the soil gutter was sloping in the direction of a nearby surface water.

Item 19 on the City’s SSO CIWQS Report Form calls for a “General Description of overflow path to include direction of flow and the location of any streams or drainage channels in the area.” (See SSMP p.23.)

In the previous Settlement Agreement entered into between River Watch and City of Arcata, dated February 9, 2010, the City agreed to “add to its notification process” for SSOs the following language: “A narrative description of the terrain surrounding the point of discharge/overflow, including the general direction of flow and the location of any streams or drainage channels in the area.” This is reflected in Item 19 of the City’s SSO CIWQS Report Form, but not in the actual practice of the City’s field crews when filling out their SSO field reports.

The February 2010 Agreement required the City’s field crews to “record the method used to estimate the volume of the spill,” which does not specifically require the inclusion of any details regarding estimation of volume in the CIWQS Report. It is the position of River Watch, in light of the continuing high number of SSOs from the City’s collection system and lack of anything beyond the most perfunctory, minimal information in the



publicly available CIWQS reports regarding the estimation of volume and nature of surrounding terrain in relation to nearby surface waters, that a more detailed description of estimation of volume and surrounding terrain should be included in the City's SSO reports to the CIWQS system.

*Mitigating Impacts.* River Watch contends the City fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's '*Report to Congress on the Impacts of SSOs*' identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the City's SSOs. There is no record of the City performing any analysis of the impacts of SSOs on critical habitat of protected species under the federal Endangered Species Act, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires a Discharger to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the City is inadequately reporting the method of estimating the volume of SSOs generally and SSOs which reach surface waters, there is no record of the City conducting water quality sampling of surface waters potentially affected by SSOs from its sewage collection system.

c. Unpermitted Discharges From Oxidation Ponds

Waste enters the City's collection system through the headworks, receiving primary and biosolids treatment comprised of mechanical bar screens, grit removal, two clarifiers, two anaerobic digesters, drying beds, and composting. Initial biological treatment is accomplished in the 2 oxidation ponds and 6 treatment marshes. The oxidation pond effluent flows to the 6 treatment marshes which operate in parallel. Effluent receiving equivalent to secondary treatment discharges at Outfall No. 002 to the Sanctuary for enhanced water quality treatment consistent with Resolution Nos. 79-20 and 83-9. Water flows through Allen, Gearheart and Hauser marshes in succession. At the design average dry weather flow, detention time in the Sanctuary is approximately 60 days and results in full standard secondary treated effluent. Placement of the new UV disinfection system after Sanctuary treatment is fundamental to the efficiency and dependability of the new system, because UV disinfection relies upon transmission of the ultraviolet light throughout the water column.

Although not contemplated at the time of adoption, RWQCB-R1 finds the application of UV disinfection consistent with Resolution Nos. 79-20 and 83-9.

Final engineering designs for the City's proposed UV disinfection system will be forwarded to RWQCB-R1 upon completion. It is required, within the effective period of the City's NPDES Permit, that treated effluent will be discharged immediately after UV disinfection through Outfall No. 003 into Humboldt Bay via the brackish marsh constructed in 2008. It is also required that final designs for an attenuated/diffused discharge will be completed and submitted to RWQCB-R1 prior to flow being diverted to Outfall No. 003.

As described above, the City's NPDES Permit contemplates a treatment process in which no effluent is discharged to Humboldt Bay until it has passed through the 2 oxidation ponds, 6 treatment marshes and the Sanctuary. However, both Oxidation Pond #1 and Oxidation Pond #2 are located immediately adjacent to Humboldt Bay.

There is no information found in the record indicating these ponds have an impermeable lining. River Watch contends that wastewater stored in the ponds leaks into soil and ground water and migrates to discharge into Humboldt Bay in violation of the following provisions in the City's NPDES Permit:

Order No. R1-2012-0031, III A. - "The discharge of waste to Humboldt Bay is prohibited unless the discharge is consistent with State Board Order No. 79-20 and Regional Water Board Resolution 83-9."

Order No. R1-2012-0031, III.B. - "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

Order No. R1-2012-0031, III E. - "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in section II. B of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in Prohibition III. I and in Attachment D, Standard Provision G (Bypass)."

d. Effluent Limit Violations

The City's Self Monitoring Reports disclose the following violations of effluent limits set forth in the City's NPDES Permit during the period from January 1, 2014 through April 30, 2016:



*Exceeding Interim Effluent Limitations – Outfall 001 (Humboldt Bay) for Dichlorobromomethane*

**8 Violations** - Order No. R1-2012-0031- IV.A.3. Table 7 - Average Monthly Limit -.56 ug/L

**12 Violations** - Order No. R1-2012-0031- IV.A.3. Table 7-Daily Maximum Limit- 1.12 ug/L

*Exceeding Final Effluent Limitations – Outfall 003 (Brackish Marsh/Humboldt Bay)for Copper*

**10 Violations** - Order No. R1-2012-0031-IV.A.2. Table 6- Average Monthly Limit- 2.9 ug/L

**3 Violations** - Order No. R1-2012-0031-IV.A.2. Table 6- Daily Maximum Limit 5.8 ug/L

*Exceeding Effluent Limitations for Total Suspended Solids (TSS).*

The City has experienced multiple violations of provisions in its NPDES Permit limiting the monthly average and weekly average concentration of TSS in its effluent, the percent removal of TSS, and the mass based pounds per day limitation of TSS in its effluent.

**15 Violations -**

Order No. R1-2012-0031- IV.A.2 - Table 6. Effluent Limitations for Outfall 003 (Brackish Marsh/Humboldt Bay)

Order No. R1-2012-0031- IV.A.1.a. Table 5. Effluent Limitations for Outfall 001 (Humboldt Bay)

Order No. R1-2012-0031- IV.A.1.b. “Percent Removal: The average monthly percent removal of BOD5 and TSS shall not be less than 65 percent. Percent removal shall be based on the difference between weekly influent and effluent concentrations, as measured at Monitoring Locations INF-001 and EFF-001, averaged over each calendar month.”

*Exceeding Effluent Limitations for Biological Oxygen Demand (BOD)*

The City has experienced multiple violations of provisions in its NPDES Permit limiting the monthly average and weekly average concentration of BOD in its effluent.

**13 Violations** - Order No. R1-2012-0031- IV.A.1.a. Table 5. Effluent Limitations for Outfall 001 (Humboldt Bay).

3. *The Person or Persons Responsible for the Alleged Violation*

The entity responsible for the alleged violations identified in this Notice is the City of Arcata, as owner and operator of the Facility and its associated collection system, as well as the those of the City's employees responsible for compliance with the City's NPDES Permits and the CWA.

4. *The Location of the Alleged Violations*

The location or locations of the various violations are identified in records created and/or maintained by or for the City which relate to the Facility and related activities as described in this Notice. The City owns and operates the Facility located at 600 South G Street and its associated collection system. The City's collection, treatment, and disposal facilities serve a population of approximately 16,800 in the City and the unincorporated community of Glendale. The Facility is located immediately adjacent to Humboldt Bay and discharges secondary treated wastewater into the Sanctuary where the quality of the wastewater is enhance by retention in the Sanctuary prior to discharge into Humboldt Bay.

5. *The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred*

The range of dates covered by this Notice is May 1, 2011 through May 1, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice*

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043.

River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning



environmental issues associated with these environs. River Watch members residing and recreating in the area of the Facility and the surrounding watershed have a vital interest in bringing the City's operations at the Facility and associated sewage collection system into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to:

Jack Silver, Esq.  
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P.O. Box 5469  
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## **RECOMMENDED REMEDIAL MEASURES**

### **I. DEFINITIONS**

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.
- B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.
- C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water such that if defective, could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including age, composition and PACP rating of the sewer line, nature of the defect, soil type, groundwater pattern, and the like.
- D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP or comparable rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss

due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect
- 2 – Minor to moderate defect
- 1 – Minor defect

## II. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the City into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the City's ongoing non-compliance with the CWA:

### A. Sewage Collection System Investigation and Repair

1. Repair or replacement, within 2 years, of all sewer lines in the City's sewer collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past 10 years and were rated as Significantly Defective (PACP 4 or 5) or given a comparable assessment.
2. Within 2 years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past 10 years.
3. Within 2 years after completion of the Surface Water Condition Assessment above, the City shall:
  - i. Repair or replace all sewer lines found to be Significantly Defective;
  - ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; sewer pipe segments which contain defects with a rating of 3 that are not replaced or repaired within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle.



4. Beginning no more than 1 year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within 7 years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within 3 years of the rating determination; and,
5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every 5 years. This program shall begin 1 year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS Reporting System the following items:
  - i. Language reiterating and emphasizing the importance of a narrative description of the terrain surrounding the point of discharge/overflow, including the general direction of flow and the location of any streams or drainage channels in the area, so as to provide a reasonable basis to determine the likelihood that the discharge did or did not reach a surface water.
  - ii. The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered;
  - iii. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted, to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began);
  - iv. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
2. Pursuant to the City's legal duty under the Statewide WDR, Section D.7.v., the City shall have a qualified biologist develop and implement an adequate sampling program to determine the nature and impact of all SSOs. The protocol shall distinguish among different measures required for different spills based on factors, including but not limited to, volume, proximity to ground and surface water, effects on habitat, proximity to preferential pathways, threats to health and safety, and any other factors identified by the wildlife biologist or environmental expert preparing the protocol.

The protocol shall emphasize biological impacts and threats to human health, considered cumulatively, with no specific threshold based on volume.

3. Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.
4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Pond Leakage Monitoring Program

Within 1 year the City shall design a system of ground water monitoring wells located between Oxidation ponds # 1 and #2 and Humboldt Bay at locations most likely to disclose impacts of discharges from the ponds to ground water, and to assess the likelihood of discharges of wastewater from the ponds to Humboldt Bay via underground migration.

## CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected communities identified. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day "notice period"** to promote resolution of disputes. River Watch encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to



resolve this dispute, or receipt of additional information demonstrating the City is in compliance with the strict terms and conditions of its NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jerry Bernhaut".

Jerry Bernhaut

JB:lhbm

*SERVICE LIST*

Nancy Diamond, City Attorney  
Law Office of Nancy Diamond  
822 G Street, Suite 3  
Arcata, CA 95521

✓ Administrator  
U.S. Environmental Protection Agency  
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Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd., Suite A  
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